

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1921 of 2015**

- Dream India Foundation Society A Society Registered Under Registration Act, 1973, Through Smt. N. Curie, Academic Director, Dream India Foundation, Having Its Registered Office At House No. 1171, Maruti Vihar, Rameshwar Nagar, Bhanpuri, Raipur, (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, School Education, Mahanadi Bhawan, Naya Raipur, (Chhattisgarh)
2. District Education Officer, Pension Bada, District Raipur, (Chhattisgarh)
3. Block Education Officer, Pension Bada, District Raipur, (Chhattisgarh)

---- Respondent**And****WPC No. 1922 Of 2015**

- Dream India Foundation Society A Society Registered Under Registration Act, 1973, Through Smt. N. Curie, Academic Director, Dream India Foundation, Having Its Registered Office At House No. 1171, Maruti Vihar, Rameshwar Nagar, Bhanpuri, Raipur (Chhattisgarh)

---- Petitioner**Vs**

1. State Of Chhattisgarh Through The Secretary, School Education, Mahanadi Bhawan, Naya Raipur, (Chhattisgarh)
2. District Education Officer, Pension Bada, District Raipur, (Chhattisgarh)
3. Block Education Officer, Pension Bada, District Raipur, (Chhattisgarh)

---- Respondent**And**

WPC No. 1923 Of 2015

- Dream India Foundation Society A Society Registered Under Registration Act, 1973, Through Smt. N. Curie, Academic Director, Dream India Foundation, Having Its Registered Office At House No. 1171, Maruti Vihar, Rameshwar Nagar, Bhanpuri, Raipur (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, School Education, Mahanadi Bhawan, Naya Raipur, (Chhattisgarh)
2. District Education Officer, Pension Bada, District Raipur, (Chhattisgarh)
3. Block Education Officer, Pension Bada, District Raipur, (Chhattisgarh)

---- Respondent

And

WPC No. 2245 Of 2015

- D I S Education Society A Society Registered Under Registration Act 1973, Through Smt. N. Curie, Academic Director, Dream India Foundation, Having Its Registered Office At House No. 1171, Maruti Vihar Rameshwar Nagar, Bhanpuri, Raipur Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, School Education, Mahandi Bhawan, Naya Raipur Chhattisgarh
2. District Education Officer, Bemetara, District Bemetara Chhattisgarh
3. Block Education Officer, Bemetara, District Bemetara Chhattisgarh

---- Respondent

For Petitioners : Shri Kishore Bhaduri, Advocate.

For Respondents : Shri Shashank Thakur, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****18/01/2016**

1. Petitioner Dream India Foundation Society has preferred the three writ petitions viz. WPC Nos.1921/2015, 1922/2015 and 1923/2015 assailing the order passed by the District Education Officer, Raipur whereby the authority has directed the petitioner to close operation of the school failing which FIR shall be lodged with the concerned police. Prayer for quashment of the order dated 6.10.2015 and 14.7.2015 has also been made by which the petitioner was imposed penalty of Rs.1 lakh in each case and for continued violation, further penalty of Rs.1,000/- per day for each school has also been imposed.
2. In WPC No.2245/2015, the petitioner has prayed for quashment of the order dated 30.9.2015 and 17.11.2015 whereby the society was directed to close operation of the school and on its failure to do so, penalty of Rs.1 lakh and Rs.10,000/- for each continuing day, thereby aggregate penalty of Rs.5,90,000/- has been imposed.
3. The petitioner has established 4 Middle Schools (from Class 1st to 8th) in the locations namely, Tatibandh, New Changorabhata, Gudiyari and Bemetara. In first 3 cases, the petitioner applied for grant of permission to establish the school on 13th April, 2015 and in the 4th case, such application was moved on 28.4.2015. The petitioner however issued an advertisement on 18th March, 2015 inviting applications for admitting the students in the first 3 schools. The petitioner's application for recognition filed on 13th April, 2015 was

taken up for consideration by the District Education Officer (henceforth 'the DEO') and by communication dated 14.7.2015 the petitioner was informed about the deficiencies in the school. The deficiencies pointed out were in the nature of lack of playground, lease period being already over, some of the school being used for residential purpose, no separate toilets for boys and girls, premises being not safe for children/students.

4. The above deficiencies have not been pointed out in all the cases but the deficiencies are mixed up in one or the other case. The petitioner responded to the said notice on 31.7.2015 to inform the authorities that the deficiencies are non-existent and the petitioner fulfills all the criteria for grant of recognition, therefore, certificate of recognition be issued forthwith.
5. The respondent/DEO had issued a communication to the petitioner as early as on 18th May, 2015 i.e. immediately after the advertisement was issued by the petitioner institution on 18.3.2015 alerting the petitioner that the advertisement issued by it has the effect of misleading the public and the petitioner institution have not been granted recognition, yet the institution is claiming that it is recognized institution. On 1.6.2015, the DEO constituted a team of 3 officers for conducting inspection and based on the inspection report, notice dated 14.7.2015 was issued. On 4.8.2015, the petitioner was issued show cause notice for opening the school and admitting the students without recognition. Another similar notice was issued on 2.9.2015 warning the petitioner that in the event the school continues to

operate, it will violate the provisions contained in Sections 18 and 19 of the Right of Children to Free and Compulsory Education Act, 2009 (for short 'the Act, 2009') and the school will be saddled with the penalty of Rs.1 lakh and thereafter further penalty of Rs.10,000/- per day for continued violation. After issuance of this notice, the impugned order has been passed.

6. Assailing the order, Shri Bhaduri, learned counsel for the petitioner would submit that there is no deficiency in any of the school run by the petitioner, therefore, the inspection report itself was perverse and at the first instance, the certificate of recognition should have been issued. It is further argued that imposition of penalty and direction to close the school has been issued without following the principles of natural justice inasmuch as recognition has been withdrawn without hearing the petitioner as contemplated under Rules 15 and 16 of the Right of Children to Free and Compulsory Education Rules, 2010 (for short 'the Rules, 2010'). He would submit that even for a new school the provisions contained in Section 18 & 19 read with Rules 15 & 16 would apply. Therefore, at-least 3 years period should have been allowed in favour of the petitioner society for removing the deficiencies, if any. Therefore, direction to close the school is in violation of the provisions contained in the Act, 2009.
7. Shri Shashank Thakur, learned Govt. Advocate would submit that the provisions contained in Sections 18 & 19 read with Rules 15 & 16 of the Rules, 2010 clearly provide that a new school cannot be established without first obtaining recognition and Rule 16 would

operate only where the existing recognition is sought to be withdrawn. He would further submit that several notices were issued to the petitioner for closing the schools which were being run without recognition. Therefore, principles of natural justice have otherwise been followed.

8. To appreciate the requirement of recognition and the scope of operation of the provisions, Sections 18 & 19 of the Act, 2009 need reference which are reproduced hereunder:-

“18. No school to be established without obtaining certificate of recognition.- (1) No school, other than a school established, owned or controlled by the appropriate Government or the local authority, shall, after the commencement of this Act, be established or function, without obtaining a certificate of recognition from such authority, by making an application in such form and manner, as may be prescribed.

(2) The authority prescribed under sub-section (1) shall issue the certificate of recognition in such form, within such period, in such manner, and subject to such conditions, as may be prescribed:

Provided that no such recognition shall be granted to a school unless it fulfils norms and standards specified under section 19.

(3) On the contravention of the conditions of recognition, the prescribed authority shall, by an order in writing, withdraw recognition:

Provided that such order shall contain a direction as to which of the neighbourhood school, the children studying in the derecognised school, shall be admitted:

Provided further that no recognition shall be so withdrawn without giving an opportunity of being heard to such school, in such manner, as

may be prescribed.

(4) With effect from the date of withdrawal of the recognition under sub-section (3), no such school shall continue to function.

(5) Any person who establishes or runs a school without obtaining certificate of recognition, or continues to run a school after withdrawal of recognition, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.

19. Norms and standards for school.- (1) No school shall be established, or recognised, under section 18, unless it fulfils the norms and standards specified in the Schedule.

(2) Where a school established before the commencement of this Act does not fulfil the norms and standards specified in the Schedule. It shall take steps to fulfil such norms and standards as its own expenses, within a period of three years from the date of such commencement.

(3) Where a school fails to fulfil the norms and standards within the period specified under sub-section (2), the authority prescribed under sub-section (1) of section 18 shall withdraw recognition granted to such school in the manner specified under sub-section (3) thereof.

(4) With effect from the date of withdrawal of recognition under sub-section (3), no school shall continue to function.

(5) Any person who continues to run a school after the recognition is withdrawn, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.”

9. Similarly, Rules 15 & 16 of the Rules, 2010 need reference which are reproduced hereunder:-

“15. Recognition to school. (1) Every school, other than a school established, owned or controlled by the Central Government, appropriate Government or the local authority, established before the commencement of this Act shall make a self declaration within a period of three months of the commencement of the Act, in Form No.1 to the concerned District Education Officer regarding its compliance or otherwise with the norms and standards specified in the Schedule and fulfillment of the following conditions, namely :-

(a) the school is run by a society registered under the Societies Registration Act, 1860 (21 of 1860), or a public trust constituted under any law for the time being in force;

(b) the school is not run for profit to any individual, group or association of individuals or any other persons;

(c) the school conforms to the values enshrined in the Constitution;

(d) the school buildings or other structures or the grounds are used only for the purposes of education and skill development;

(e) the school is open to inspection by any officer authorised by the appropriate Government or the local authority;

(f) the school furnishes such reports and such information as may be required from time to time and complies with such instructions of the appropriate Government or the local authority as may be issued to secure the continued fulfillment of the condition of recognition or the removal of deficiencies in working of the school.

(2) Every self declaration received in Form 1 shall be placed by the District Education Officer in public domain within fifteen days of its receipt.

(3) The District Education Officer shall, within three months of the receipt of the self declaration, cause on-site inspection of such schools which claim in Form No.1 to fulfill the norms and standards and the conditions mentioned in sub-rule (1).

(4) After the inspection referred to in sub-rule (3) is carried out, the inspection report shall be placed by the District Education Officer in public domain and schools found to be conforming to the norms, standards and the conditions shall be granted recognition by the District Education Officer in Form No.2 within a period of fifteen days from the date of inspection.

(5) Schools that do not conform to the norms, standards and conditions mentioned in sub-rule (1) shall be listed by the District Education Officer through a public order to this effect; such schools may request the District Education Officer for an on-site inspection for grant of recognition at any time within the next two and a half years, so that such period does not exceed three years from the commencement of the Act;

(6) Schools which do not conform to the norms, standards and conditions mentioned in sub-rule (1) within three years from the commencement of the Act, shall cease to function.

(7) Every school, other than a school established, owned or controlled by the Central Government, appropriate Government or local authority, established after the commencement of this Act shall conform to the norms and standards and conditions mentioned in sub-rule (1) in order to qualify for recognition under this rule.

16. Withdrawal of recognition to school.- (1) Where the District Education Officer (hereinafter in this rule referred to as the said Officer) on his own motion, or on any representation received from any person, has reason to believe, to be recorded in writing, that a school recognised under rule 15, has violated one or more of the conditions for grant of recognition or has failed to fulfill the norms and standards specified in the Schedule, the District Education Officer shall act in the following manner, -

(a) issue a notice to the school specifying the violations of the condition of grant of recognition and seek its explanation within one month.

(b) in case the explanation is not found to be satisfactory or no explanation is received within

the stipulated time period, the said Officer may cause an inspection of the school, to be conducted by a Committee of three to five members comprising of educationists, civil society representatives, media, and government representatives, which shall make due inquiry and submit its report, along with its recommendations for continuation of recognition or its withdrawal, to the said Officer.

(c) on receipt of the report and recommendations of the Committee, the said Officer may pass order for withdrawal of recognition:

Provided that no order for withdrawal of recognition shall be passed by the said Officer without giving the school adequate opportunity of being heard.

Provided further that no such order shall be passed by the said Officer without prior approval of the appropriate Government.

(2) The order of withdrawal of recognition passed by the said Officer shall be operative from the immediately succeeding academic year and shall specify the neighbourhood schools to which the children of that school shall be admitted.”

10. A close reading of the provisions would manifest that after the commencement of the Act, 2009 no school other than the schools owned or controlled by the appropriate Government or local authority, shall be established or functioned without obtaining certificate of recognition from such authority by making an application in such form and manner as may be prescribed. The norms and standards for grant of such certificate of recognition has been provided under the Rules. Similarly for the schools which are established before the commencement of the Act, 2009, a period of 3 years has been allowed under Section 19 (2) for fulfillment of standards specified in

the Schedule. In the event, the existing schools fail to fulfill the norms and standards within a period of 3 years, the authority prescribed under sub-section (1) of Section 18 has been empowered to withdraw the recognition granted to such schools in the manner specified in sub-section (3) of Section 18. Any person who establishes or runs a school without obtaining the certificate or continues to run the school after withdrawal of the recognition is liable to pay fine which may extend to Rs.1 lakh and in case of continuing contraventions, to pay fine of Rs.10,000/- for each day during which such contraventions continues.

11. Exactly on the lines of the provisions contained in Sections 18 & 19, Rule 15 prescribes the procedure for grant of recognition to new schools as well as existing schools. The Rules prescribe Form 1 which is the self declaration cum application for grant of recognition to school whereas Form 2 is the format of certificate of recognition issued by the DEO. For issuance of certificate of recognition, a school is required to submit self declaration cum application to the concerned DEO conforming the norms and standards specified in the Schedule and fulfillment of the conditions mentioned in Rule 15 (1) which have been reproduced hereinabove.
12. On receipt of such application in Form 1, the DEO is enjoined to put application (s) within public domain within 15 days of its receipt and thereafter to cause on-site inspection within a further period of 3 months. The inspection report is required to be placed in public domain and the schools found to be conforming to the norms,

standards and conditions shall be granted recognition by the DEO in Form 2 within a period of 15 days from the date of inspection and such schools which do not conform to the norms, standards and conditions shall be listed by the DEO through public order to this effect and in such eventuality, such schools may request the DEO for on-site inspection for grant of recognition at any time within next two and half years so that such period does not exceed 3 years from the commencement of the Act, 2009. Sub-rule (6) of Rule 15 specifically provides that the schools which do not conform to the norms, standards and conditions mentioned in sub-rule (1) within 3 years from the commencement of the Act shall cease to function.

13. A close understanding of the provisions contained in Rule 15 leads to irresistible conclusion that the same applies to both set of schools i.e. the new schools and the existing schools. If the new school applies for recognition in terms of Section 18 read with Rule 15, the application shall first be put in public domain by the DEO within 15 days and thereafter the DEO shall cause on-site inspection to ascertain whether the norms, standards and conditions mentioned in the Act and the Rules are complied with. If during the inspection it is found that the school has complied with the norms, standards and conditions, the certificate of recognition shall necessarily be issued within a period of 15 days from the date of inspection.
14. Sub-rules (5) & (6) of Rule 15 applies to the existing schools which were in operation on the date of coming into force of the Act, 2009. If such schools fail to adhere to the norms, standards and conditions of

recognition, they are granted two and half years time to make good the deficiencies and request for on-site inspection within the said period. If the deficiencies are not removed within 3 years, even the existing schools shall cease to function. This period of two and half years or three years would not apply to the new schools because under Section 18 (5) of the Act, 2009, a new school cannot be established without there being a certificate of recognition. If the new school is not authorized to operate without certificate of recognition, there is no eventuality or contingency for granting such schools 3 years time to remove the deficiencies.

15. The argument that in terms of Rule 16, the petitioner should have been issued a show cause notice before cancellation of the recognition or closure of operation of the school has not impressed this Court because Rule 16 applies to the existing schools which have fulfilled the norms at the first instance or to such schools which have been granted certificate of recognition with or without conditions and they fail to comply with the conditions within the stipulated period. In any case, it applies only to the school which has certificate of recognition or is an existing school whose recognition is to be withdrawn but not to the new school which cannot at all be opened without certificate of recognition. Withdrawal of recognition presupposes the existence of certificate of recognition, therefore, if the new school is not entitled to be established without certificate of recognition, Rule 16 has no application in such case.

16. A grievance has been agitated that the order has been passed without

following the principles of natural justice.

17. However, the return filed by the State carries at-least 3 notices issued to the petitioner bringing into its notice that in the event the schools continue to operate without recognition, it would be liable to penalty of Rs.1 lakh and thereafter Rs.10,000/- per day for each day of continued violation. Therefore, it is not a case where the principle of natural justice has been violated.
18. At this stage, Shri Kishore Bhaduri, learned counsel for the petitioner would submit that in first 3 cases, the school has admitted the students and is operating under the interim order passed by this Court. The orders issued by the DEO has not made any arrangement for shifting of the students to any other school, therefore, at-least for this academic session, the school may be permitted to operate and in the meanwhile, the petitioner shall satisfy the norms, standards and conditions in accordance with the provisions of the Act, 2009 and the rules framed thereunder.
19. Shri Shashank Thakur, learned Govt. Advocate would oppose the prayer on submission that the mandate of Section 18 (5) is for not allowing any school to be established without certificate of recognition, therefore, the prayer deserves to be rejected.
20. True it is that Section 18 (5) prohibits establishment of the school without obtaining certificate of recognition, however, the fact remains that the petitioner has admitted the students from Class 1st to Class 8th and the annual examinations are generally held in the month of

March. Therefore, little time is left for shifting the students to some other school. It is also to be seen that in case of change of school, the students also need time to adapt them in the new school as it is difficult to concentrate on their studies in the new environment. Therefore, directing closure of the school at this stage would not be in the interest of the students. However, since the petitioner has also operated the school without certificate of recognition, it cannot be said that penalty imposed on it was absolutely illegal or unjustified. But at the same time, photographs annexed with the writ petitions would indicate that the petitioner does not appear to be one such make shift fly by night school which would close its operation to the detriment of the society leaving the students at large. There are infrastructures built by the petitioner which are no less than any Government school.

21. Therefore, ends of justice would be served if the petitioner is directed to pay penalty of Rs.50,000/- for each of the school which was operated without recognition. It is ordered accordingly. Let penalty be paid within a period of 5 weeks from today. The petitioner shall move necessary application/representation along with complete documents available with it specifying the norms, standards and conditions for recognition. On submission of the application/documents as mentioned in Form 1 under the Rules, 2010, the DEO shall cause on-site inspection within 15 days thereafter. If the petitioner is found to fulfill the norms, standards and conditions, certificate of recognition shall be issued in favour of the petitioner within 15 days thereafter, otherwise the petitioner shall be informed of the deficiencies which

shall be corrected by the petitioner within 3 weeks thereafter. Let the entire process of dealing with the application/representation be completed by 30th April, 2016. If the petitioner is not granted any certificate of recognition, it shall cease to operate after 30th April, 2016.

22. In WPC No.2245/2015, the school has already been frozen, therefore, there is no question of permitting operation of the school. However, for the said school also, the petitioner shall move application/representation which shall be dealt with in accordance with the directions issued for the other school. Order of penalty in this case is also modified in the same terms like petitioner Dream India Foundation Society.

23. With the aforesaid directions, the writ petitions stand disposed of.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve